

Assembly Bill No. 123

Passed the Assembly August 20, 1998

Chief Clerk of the Assembly

Passed the Senate August 18, 1998

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1998, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to amend Sections 3717, 3719, and 3750 of, and to add Sections 3758, 3758.5, 3758.6, and 3759 to, the Business and Professions Code, relating to respiratory care practitioners, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 123, Wildman. Respiratory care practitioners.

(1) Existing law, known as the Respiratory Care Practice Act, provides that, subject to certain disclosure limitations, members of the examining committee of the Respiratory Care Board, or respiratory practitioners or investigators working on their behalf, may inspect or require reports from hospitals and other facilities providing respiratory care, and from the respiratory care staff therein, concerning the care, treatment, services, and facilities provided therein, and may inspect patient records with respect to respiratory care.

This bill would provide that the board, or practitioners, investigators, or enforcement staff appointed by the board, may make those inspections and may additionally inspect or require reports concerning the employment of staff providing respiratory care, treatment, or services. The bill would authorize these persons to inspect employment records relevant to an official investigation upon submission of a written request specifying the portion of the records to be inspected. This bill would also remove certain restrictions against disclosure, as specified.

(2) Existing law requires the board to develop and implement rules and regulations for continuing education of respiratory care licensees, not to exceed 15 hours of continuing education every 2 years.

This bill would instead provide for continuing education not to exceed 30 hours every 2 years, and would require licensees, upon renewal of a license, to submit proof of completion of continuing education requirements to the board, as specified.



(3) Existing law authorizes the board to order the suspension or revocation of, or the imposition of probationary conditions upon, a licensee for any of certain specified causes.

This bill would specify as additional causes, incompetence in the licensee's practice, and a pattern of substandard care.

(4) Existing law authorizes the Respiratory Care Board to take disciplinary action against licensed practitioners.

This bill would require employers of respiratory care practitioners to report the suspension or termination of practitioners for cause, as defined. This bill would subject an employer who fails to submit this information to an administrative fine, as specified. Since the moneys derived from the assessment of the fine would be deposited into the Respiratory Care Fund, which is continuously appropriated, the bill would make an appropriation.

This bill would require licensees with knowledge that another person has violated any law or regulations administered by the board to report this information to the board in writing and to cooperate with the board by providing further information or assistance as may be required. This bill would also provide for civil immunity under a specified provision of law in connection with the making of any report required under these provisions.

This bill would require employers to report to the board the name and other information concerning the supervisor of a licensee suspended or terminated for cause, and would require the board, if the supervisor is also a licensee under these provisions, to investigate whether due care was exercised by the supervisor. It would require the employer to report this information about the supervisor to the appropriate licensing board if the supervisor is, instead, a health professional licensed by another licensing board. By adding these new requirements to the Respiratory Care Practice Act for employers of respiratory care practitioners, this bill would expand the scope of an existing crime applicable

to the violation of any provision of the Respiratory Care Practice Act, thereby imposing a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 3717 of the Business and Professions Code is amended to read:

3717. The board, or any licensed respiratory care practitioner, enforcement staff, or investigative unit appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility or corporation providing respiratory care, treatment, or services and the respiratory care staff thereof, with respect to the respiratory care, treatment, services, or facilities provided therein, or the employment of staff providing the respiratory care, treatment, or services, and may inspect respiratory care patient records with respect to that care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section is subject to the restrictions against disclosure contained in Section 2225. Those persons may also inspect employment records relevant to an official investigation provided the written request to inspect the records specifies the portion of the records to be inspected.

SEC. 2. Section 3719 of the Business and Professions Code is amended to read:

3719. Each person renewing his or her license shall submit proof satisfactory to the board that, during the preceding two-year period, he or she completed the required number of continuing education hours established by regulation of the board. Required



continuing education shall not exceed 30 hours every two years.

Successful completion of an examination approved by the board may be submitted by a licensee for a designated portion of continuing education credit. The board shall determine the hours of credit to be granted for the passage of particular examinations.

SEC. 3. Section 3750 of the Business and Professions Code is amended to read:

3750. The board may order the suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

(a) Advertising in violation of Section 651 or Section 17500.

(b) Fraud in the procurement of any license under this chapter.

(c) Knowingly employing unlicensed persons who present themselves as licensed respiratory care practitioners.

(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

(e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.

(f) Negligence in his or her practice as a respiratory care practitioner.

(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

(h) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

(i) The aiding or abetting of any person to engage in the unlawful practice of respiratory care.



(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

(k) Falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any patient, hospital, or other record.

(l) Changing the prescription of a physician and surgeon, or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual patient harm.

(m) Denial, suspension, or revocation of any license to practice by another agency, state, or territory of the United States for any act or omission that would constitute grounds for the denial, suspension, or revocation of a license in this state.

(n) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent



scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(o) Incompetence in his or her practice as a respiratory care practitioner.

(p) A pattern of substandard care.

SEC. 4. Section 3758 is added to the Business and Professions Code, to read:

3758. (a) Any employer of a respiratory care practitioner shall report to the Respiratory Care Board the suspension or termination for cause of any practitioner in their employ. The reporting required herein shall not act as a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800, and shall not be subject to discovery in civil cases.

(b) For purposes of the section, “suspension of termination for cause” is defined to mean suspension or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice respiratory care.

(2) Unlawful sale of controlled substances or other prescription items.

(3) Patient neglect, physical harm to a patient, or sexual contact with a patient.

(4) Falsification of medical records.

(5) Gross incompetence or negligence.

(6) Theft from patients, other employees, or the employer.

(c) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation.

SEC. 5. Section 3758.5 is added to the Business and Professions Code, to read:

3758.5. If a licensee has knowledge that another person may be in violation of, or has violated, any of the statutes or regulations administered by the board, the licensee shall report this information to the board in

writing and shall cooperate with the board in furnishing information or assistance as may be required.

SEC. 6. Section 3758.6 is added to the Business and Professions Code, to read:

3758.6. In addition to the reporting required under Section 3758, an employer shall also report to the board the name, professional licensure type and number, and title of the person supervising the licensee who has been suspended or terminated for cause, as defined in subdivision (b) of Section 3758. If the supervisor is a licensee under this chapter, the board shall investigate whether due care was exercised by that supervisor in accordance with this chapter. If the supervisor is a health professional, licensed by another licensing board under this division, the employer shall report the name of that supervisor and any and all information pertaining to the suspension or termination for cause of the person licensed under this chapter to the appropriate licensing board.

SEC. 7. Section 3759 is added to the Business and Professions Code, to read:

3759. Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Approved _____, 1998

Governor

